

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA

v.

BRIAN CARPENTER (1)  
JERRY HAWRYLAK (2)

No. 3:19-CR-452-X

**DEFENDANTS' UNOPPOSED MOTION TO CONTINUE TRIAL**

For the reasons that follow, the defendants Brian Carpenter and Jerry Hawrylak respectfully request that their trial and any pretrial deadlines be continued until October 2022:

**Factual Background**

The defendants were indicted in a multi-count healthcare fraud indictment on or about September 11, 2019, and their trial is currently scheduled for May 9, 2021.

On October 19, 2020, the Court was made aware that Dr. Brian Carpenter was suffering from some serious medical issues, including frequent debilitating seizures. Dkt. No. 65. These seizures arise completely without warning and often cause Dr. Carpenter to lose consciousness for brief periods of time (as well as lead to other incidental injuries, such as from falling as a result of losing consciousness and/or muscle control). An additional side-affect to the seizures has been impaired memory and noted cognitive decline. For months, Dr. Carpenter has been under the close care of multiple physicians in order to determine the cause and to prevent the reoccurrence of these seizures.

To date, Dr. Carpenter's doctors have been unable to determine what is causing his seizures. While the frequency of the seizures has decreased, Dr. Carpenter continues to suffer from substantial memory problems and has difficulty speaking clearly.

To date, the government has made at least 20 separate discovery productions totaling over 5,500,000 pages of bates stamped documents. Due to Dr. Carpenter's debilitating medical issues, he has been unable to assist his attorneys in reviewing any meaningful amount of discovery and has been unable to assist his counsel in preparing his defense.

### **Legal Authority**

The Speedy Trial Act provides that a defendant's trial "shall commence within seventy days" from when the indictment is first made public or from the date the defendant first appears before a judge on the charges, whichever date occurs last. 18 U.S.C. § 3161(c)(1). However, a court can grant either party a continuance and exclude any period of delay from the Speed Trial Act timeframe provided the court finds that the "ends of justice [are] served by the granting of such [a] continuance outweigh the best interests of the public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A). One of the factors the court can consider for granting such a continuance is whether counsel for the defendant needs additional time to effectively prepare for the case. 18 U.S.C. § 3161(h)(7)(B)(iv).

Undersigned counsel has exercised a great amount of diligence in this matter; however, the discovery is just too voluminous to sufficiently comb through before the

May 9 trial date, much less investigate any issues that may be found in the discovery. In addition, Dr. Carpenter's medical issues have rendered him incapable of assisting his counsel in preparing his defense.

**Conclusion**

The defendants believe that continuing this trial will allow the parties to sufficiently review the discovery and hopefully allow Dr. Carpenter's health to improve to the point that he is sufficiently able to assist in his defense. Based on the foregoing, the defendants respectfully request that the Court continue their trial and any pretrial deadlines until October 2022.

Respectfully submitted,

[Signatures on the following page]

/s/ Brian D. Poe

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ATTORNEYS FOR BRIAN CARPENTER

CERTIFICATE OF CONFERENCE

I certify that I have conferenced with Department of Justice Trial Attorney Brynn Schiess regarding this motion, and Ms. Schiess has stated that the government is unopposed to a trial date set on or before October 31, 2022.

/s/ Brian D. Poe

BRIAN D. POE

CERTIFICATE OF SERVICE

I certify that on February 18, 2022, I electronically filed the foregoing document with the Clerk of the Court for the United States District Court, Northern District of Texas, using the electronic case filing system of the Court. The electronic case filing system sent a “Notice of Electronic Filing” to all attorneys who have consented in writing to accept this Notice as service of this document.

/s/ Brian D. Poe

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